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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 503

THOMAS L. "JACK" SPIERS,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

T. J. Wills,
Henry Mounger,
R. G. Wooton,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

Thomas L. "Jack" Spiers, through his attorneys, prays that a writ of certiorari issue to the United States Emergency Court of Appeals, directing it to send up the record in the above entitled cause, to be reviewed by this court and such order entered therein as may appear from the record in the case to be mete and proper.

Jurisdiction

The judgment of the United States Emergency Court of Appeals was entered on August 29, 1945, and the petition for rehearing was entered on September 19, 1945. The jurisdiction of this court is predicated upon the Federal

Statute, section 924 (d) Title 50, Appendix of the United States Code Annotated, and section 240 of the Judicial Code, as amended.

History of the Case

Mississippi has statutory prohibition. The sale of intoxicating liquor is prohibited in the State of Mississippi and all property rights in intoxicating liquors is abrogated by the statute. Section 2618 Mississippi Code 1942.

By the 21st amendment to the Constitution of the United States, the transportation or importation into any state or territory or possession of the United States for delivery or use therein, of intoxicating liquors, in violation of the laws thereof, is hereby prohibited. The Congress of the United States, in carrying into effect the obligation imposed upon the Federal Government by the provisions of the 21st amendment, enacted the liquor enforcement act of 1936, 27 U. S. C. A., paragraph 221 *et sequa*.

Under the Emergency Price Control Act a ceiling price was placed on whiskey. The petitioner herein is charged with violating the O.P.A. Administrator's ceiling price promulgated on the sale of whiskey in the State of Mississippi. Petitioner challenges the right of the Administrator to extend a ceiling price on the sale of whiskey in the State of Mississippi. He filed a protest with the Administrator, protesting the extension of the ceiling price on whiskey to the State of Mississippi. The Administrator overruled his protest. The case was appealed to the Emergency Court of Appeals, and by a divided court the opinion of the Administrator was affirmed.

Mississippi, being a dry state, and in the light of the duties imposed upon the national government by the 21st amendment to the Constitution, can the Congress authorize the Administrator, and can the Administrator, either by authorization of Congress or the inherent rights under the

war powers, override the Federal Constitution, the Federal Laws and the laws of the State of Mississippi and extend a ceiling price on whiskey to sales made in Mississippi?

It is the contention of the petitioner herein that the ceiling price cannot be extended to the sales of whiskey in Mississippi. The Emergency Court of Appeals says:

> "Before discussing the arguments of complainants, and at the outset of our consideration of the legal proposition submitted for determination, it should be stated that pursuant to the Twenty-First Amendment to the Federal Constitution, the State of Mississippi has enacted laws prohibiting the sale, importation, manufacture or use of intoxicating liquors for beverage purposes, and has declared that all property rights in such liquors were abolished."

It is the contention of petitioner that the court failed to grasp the scope of the 21st amendment and the liquor enforcement duty of the United States. The prohibition laws enacted by the State of Mississippi were not enacted pursuant to the 21st amendment to the Federal Constitution. They were prohibition laws enacted by the State of Mississippi as a sovereign state. The laws of the State of Mississippi will show that prohibition laws in Mississippi were enacted and really enforced long prior to the adoption of the 18th amendment. That in the adoption of the 18th amendment the State of Mississippi yielded her sovereign power to the United States Government.

When the 18th amendment was repealed and the delegated powers exercised thereunder, by the National Government, were revested in the states, the State of Mississippi continued her prohibition laws. Mississippi, as a sovereign state, looked to and expected the National Government to perform the imposed duties contained in the 21st amendment.

The misconception of the Emergency Court of the whole scheme of prohibition in the State of Mississippi, as reflected in the quoted paragraph from the opinion, *supra,* is reflected throughout the opinion. When analyzed the extent to which the court has missed the true application of the Constitution becomes apparent.

It is the contention of petitioner that the prohibition of the importation of intoxicating liquors into Mississippi is as imperative upon the National Government as the waging of a defensive war against an attacking foe.

The statement is made in the opinion that if the contention we make was adopted that a noncompliance with the statutes and ordinances regulating sales of commodities, such as Sunday sales, sales without the required license or sales of certain drugs without a doctor's prescription and the like, would confer immunity from price control upon persons making sales in violation of the provisions of the Emergency Price Control Act.

The court overlooked the fact that noncompliance with the state statutes and ordinances is the transgression of the individual citizen, and the law or ordinance transgressed is the mandate of a sovereign power, whereas in the case at bar the placing of a price control on the sale of a commodity that is prohibited by federal and state law, is the transgression and violation of a duty imposed upon the Sovereign itself. This is the wrong of the Sovereign and not of the subject.

It is true that there is an old tradition that "the King can do no wrong." To excuse and justify many acts of state we have, in this Republic, been pleased to quote the tradition and apply it to the Sovereign will of the American people. That tradition, however, is wrong. Right and Justice is eternal. It is as immutable as the laws of gravity. When a duty rests upon the Sovereign power to do or not to do a specific thing, its failure to

discharge that duty is a wrong. It is as much the duty of the Federal Government to marshal the armed forces of this great Republic to the extent that may be necessary to repel the invading bootlegger, bringing intoxicating liquors into the State of Mississippi, as it is its duty to marshall the armed forces and the resources of this country to repel an invading foe. When they do that; when the Government recognized that it is its duty to do that, a ceiling price or price regulation on the sale of intoxicating liquors cannot be extended to sales made in the State of Mississippi, a dry State.

We respectfully submit to the court that the opinion in chief, in this case, is wrong. That the opinion of the Chief Judge, in dissenting, is right. The dissenting opinion does not go as comprehensively into the question and into the analysis of the reasons why it cannot be extended as we would wish. The dissenting opinion, however, is on the right road and should be made the controlling opinion in this case.

For the reasons set forth we respectfully petition this court to issue a writ of certiorari directed to the United States Emergency Court of Appeals to send up the record and that this court, on review, should reverse its decision.

Respectfully submitted,

T. J. Wills,
Henry Mounger,
R. G. Wooton,
Counsel for Petitioner.